

Message Text

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PAGE 01 STATE 076401
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INFO OCT-01 EUR-12 ISO-00 OES-07 ACDA-12 CIAE-00
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TO AMEMBASSY PARIS

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E.O. 11652:

TAGS: PARM, TECH, MNUC, ENRG

SUBJECT: NON-PROLIFERATION LEGISLATION

1. FRENCH EMBOFF SUBMITTED SERIES OF QUESTIONS CONCERNING
NEW NON-PROLIFERATION LEGISLATION AFTER HAVING MET WITH
DEPT OFFICIALS TO DISCUSS OPERATION OF LAW. QUESTIONS
SUBMITTED AND ANSWERS GIVEN TO EMBOFF ON 22 MARCH ARE
PROVIDED BELOW.

QUESTIONS:

1.DANSQUELLE MESURE LA LOI PERMET-ELLE LE LIBRE TRANS-
FERDES MATIERES AU SEIN D'UN GROUPE D'ETATS? CAS PARTI-
CULIER D'EURATOM (DEUX ETATS DOTES D'ARMES NUCLEAIRES ET
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SEPT ETA NON DOTES D'ARMES NUCLEAIRES).

2. DANS QUELLE MESURE LA LOI PERMET-ELLE LA CONTINUATION
DES EXPORTATIONS ET DE LA DELIVRANCE DES LICENCES D'EXPOR-
TATION A DESTINATION DES ETATS N'AYANT PAS ACCEPTE DE
RENEGOCIER LEURS ACCORDS DE COOPERATION?

3. CERTAINES DISPOSITIONS DE LA LOI SEMBLENT PRESERVER
LES ENGAGEMENTS MORAUX DES ETATS-UNIS DANS LEUR PARTICI-
PATION A L'INFCE. DANS QUELLE MESURE LES CRITERES ET

CONDITIONS D'EXPORTATIONS POSES PAR LA LOI POURRAIENT ETRE
AUTOMATIQUE MODIFIES POUR TENIR COMPTE DES DECISIONS
INTERNATIONALES PRISES AU VU DES RESULTATS DE L'INFCE?
NOTAMMENT EN CE QUI CERNE L'ACCEPTATION EVENTUELLE DU
PRINCIPE DU RETRAITEMENT DES CONDITIONS DANS LESQUELLES
IL DOIT AVOIR LIEU?

4. LES ETATS QUI DONNERONT UNE DECISION ACCEPTANT
D'OUVRIR DES RENEGOCIATIONS, BENEFICIERONT-ILS DU DELAI
DE GRACE DE 24 MOIS, SI CETTE DECISION EST NOTIFIEE AUX
ETATS-UNIS (1) 2 MOIS, (2) 3 MOIS, (3) 6 MOIS, (4) 12
MOIS APRES L'ENTREE EN VIGUEUR DE LA LOI?

5. LES DISPOSITIONS DE L'ARTICLE 302 RENDANT ILLEGAL POUR
"TOUTE PERSONNE" DE PARTICIPER, MEME INDIRECTEMENT, A LA
PRODUCTION DE MATIERES FISSILES SPECIALES EN DEHORS DES
ETATS-UNIT SANS ACCORD DU GOUVERNEMENT AMERICAIN SONT-ELLE
LIMITEEES AUX CITOYENS AMERICAINS?

6. POUR CE QUI EST DES AUTORISATIONS DE RETRAITEMENT A
ACCORDER AUX TERMES D'ACCORDS SUPPLEMENTAIRES, IL EST
PREVU AUX PARAGRAPHES B (2) ET (3) DU NOUVEL ARTICLE 131
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DE LA LOI QUE CES AUTORISATIONS NE SERONT EN PRINCIPE
ACCORDEES QUE POUR DES INSTALLATIONS AYANT DEJA RETRAITE,
OU AYANT DEJA HABILITEES A RETRAITER, AVANT L'ENTREE EN
VIGUEUR DE LA NOUVELLE LOI. QU'EN EST-IL DES EXTENSIONS
DES USINES EXISTANTES?

7. LES DISPOSITIONS DE 'ARTICLE 129 PERMETTENT DE
DECREE L'EMBARGO CONTRE TOUT ETAT NON DOTE D'ARMES NUC-
LEAIRES DEVELOPPANT UNE TECHNOLOGIE JUGEE PROLIFERANTE
PAR LES ETATS-UNIS, OU CONTRE TOUT ETAT DOTE D'ARMES
NUCLEAIRES CONTRIBUANT AU DEVELOPPEMENT D'UNE TELLE
TECHNOLOGIE DANS UN ETAT NON DOTE D'ARMES NUCLEAIRES.

CETTE REDACTION TRES GENERALE PERMET-ELLE DE COUVRIR
N'IMPORTE QUELLE FILIERE DE REACTEURS JUGEE PROLIFERANTE?

ANSWERS TO QUESTIONS

1. WITH RESPECT TO THE IMMEDIATELY APPLICABLE EXPORT
LICENSING CRITERIA, THE LAW REQUIRES THAT NO NUCLEAR
MATERIAL, PRODUCTION OR UTILIZATION FACILITIES, OR
SENSITIVE NUCLEAR TECHNOLOGY PROPOSED TO BE EXPORTED, AND

NO SPECIAL NUCLEAR MATERIAL PRODUCED THROUGH THE USE OF SUCH MATERIAL, BE RETRANFERRED "TO THE JURISDICTION OF ANY OTHER NATION OR GROUP OF NATIONS" UNLESS THE PRIOR APPROVAL OF THE U. S. IS OBTAINED FOR SUCH RETRANSFER.

THE SENATE REPORT ON THE NEW LEGISLATION INDICATES:

"IT SHOULD ALSO BE NOTED THAT PARAGRAPH 4 (OF NEW SECTION 127 OF THE ATOMIC ENERGY ACT WHICH CONTAINS EXPORT LICENSING CRITERIA) DOES NOT REQUIRE PRIOR APPROVAL WITH RESPECT TO TRANSFERS WITHIN THE EURATOM COMMUNITY, CONSISTENT WITH U. S. POLICY OF TREATING THAT COMMUNITY AS A SINGLE ENTITY."

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WE ALSO CONSIDER THIS VIEW IN THE SENATE REPORT TO BE APPLICABLE TO THE INTERPRETATION OF PARAGRAPH (5) OF AMENDED SECTION 123 (A) OF THE ATOMIC ENERGY ACT, WHICH APPLIES TO AGREEMENTS FOR COOPERATION.

WITH RESPECT TO NEW AGREEMENTS FOR COOPERATION, THE LAW REQUIRES THAT THE U. S. SEEK A GUARANTEE "BY THE COOPERATING PARTY" THAT ANY MATERIAL OR PRODUCTION OR UTILIZATION FACILITY TRANSFERRED PURSUANT TO THE AGREEMENT OR ANY SPECIAL NUCLEAR MATERIAL PRODUCED THEREBY WILL NOT BE TRANSFERRED "BEYOND THE JURISDICTION OR CONTROL OF THE COOPERATING PARTY" WITHOUT THE CONSENT OF THE U.S.

IT SHOULD BE NOTED THAT THE FOREGOING RESPONSE RELATES TO SPECIFIC REQUIREMENTS OF THE NEW LAW AND DOES NOT PRECLUDE THE U. S. (OR PARTIES WITH WHICH IT IS NEGOTIATING) FROM SEEKING ADDITIONAL ASSURANCES OR RIGHTS DURING THE COURSE OF NEGOTIATIONS.

2. IF THE IMMEDIATE EXPORT LICENSING CRITERIA ARE MET (AND AFTER 24 MONTHS, THE FULL SCOPE SAFEGUARDS REQUIREMENT FOR NON-NUCLEAR-WEAPON STATES), THERE IS NO TIME LIMIT IN THE LAW TO CONCLUDE RENEGOTIATION OF EXISTING AGREEMENTS AND THUS EXPORT LICENSING CAN CONTINUE. WITH RESPECT TO EURATOM, WHICH CLEARLY DOES NOT MEET THE IMMEDIATE EXPORT CRITERION CONCERNING REPROCESSING, THE LAW PERMITS EXPORT LICENSES TO BE ISSUED FOR 30 DAYS AFTER ENACTMENT (MARCH 10). IF EURATOM DOES NOT AGREE TO NEGOTIATIONS, THE NRC WILL NOT BE ABLE TO ISSUE ANY EXPORT LICENSES AFTER THE EXPIRATION OF THE INITIAL 30-DAY PERIOD. IF EURATOM AGREES TO NEGOTIATIONS, THE LAW PROVIDES FOR A WAIVER OF THE IMMEDIATE EXPORT CRITERIA ON RETRANSFER AND REPROCESSING FOR A PERIOD EXTEND-

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ING TO 24 MONTHS AFTER ENACTMENT. THEREAFTER, UPON
MAKING CERTAIN FINDINGS, THE PRESIDENT COULD EXTEND
THIS PERIOD FOR SUCCESSIVE ONE YEAR PERIODS.

3. THERE IS NO PROVISION FOR THE LAW TO BE AUTOMATICALLY
MODIFIED. CHANGES COULD OBVIOUSLY BE MADE THROUGH ENACT-
MENT OF A NEW LAW. HOWEVER, THE LAW PROVIDES CONSIDERABLE
FLEXIBILITY AS TO ITS MANNER OF IMPLEMENTATION. IN
IMPLEMENTING THE LAW AND EXERCISING ITS RIGHTS UNDER
AGREEMENTS, THE U. S. WILL TAKE INTO ACCOUNT THE RESULTS
OF INFCE.

4. AS INDICATED IN ANSWER 2, IF EURATOM AGREES TO NEGO-
TIATIONS, THE IMMEDIATE EXPORT CRITERIA ON REPROCESSING
AND RETRANSFERS WILL NOT BE APPLIED FOR A PERIOD EXTENDING
24 MONTHS AFTER THE DATE OF ENACTMENT. THIS TIME PERIOD
IS NOT MEASURED FROM WHEN THE AGREEMENT TO NEGOTIATE IS
RECEIVED.

5. THIS PROVISION APPLIES TO "ANY PERSON" AND COVERS
"DIRECT OR INDIRECT" PRODUCTION OF SPECIAL NUCLEAR
MATERIAL OUTSIDE THE U. S. "PERSON" IS BROADLY DEFINED
IN SECTION 11 (S) OF THE ATOMIC ENERGY ACT TO INCLUDE
BOTH INDIVIDUALS AND COMPANIES SUBJECT TO U.S. JURISDIC-
TION. SECTION 302 OF THE NEW LAW DOES NOT CHANGE THE
SCOPE OF APPLICATION OF SECTION 57 B OF THE ATOMIC
ENERGY ACT.

6. THIS PROVISION OF THE LAW IS AMBIGUOUS IN ITS APPLI-
CATION TO EXPANSION OF EXISTING FACILITIES. IT IS RELE-
VANT TO NOTE THAT THE SENATE REPORT CONTAINS THE FOLLOW-
ING PARAGRAPH:

"SUBSECTION 303 B (3) PROVIDES THAT THE SECRETARY OF
ENERGY SHALL ATTEMPT TO ENSURE THAT THE STANDARDS OF
SUBSECTION 303 B (2) WILL ALSO BE MET WITH RESPECT TO
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SUBSEQUENT ARRANGEMENTS FOR REPROCESSING IN THE EXEMPTED
FACILITIES AND RELATED RETRANSFERS. THE APPROVAL OF
REPROCESSING IN THE FOLLOWING FACILITIES WOULD COME
UNDER SUBSECTION 303 B (3): WINDSCALE (UK), MARCOULE
AND LA HAGUE (FRANCE), EUROCHEMIEC (BELGIUM), WAK (FRG),
AND TOKAI-MURA (JAPAN). IT SHOULD BE NOTED THAT IMPLE-
MENTATION OF THE STANDARD DESCRIBED IN SUBSECTION

303 B (2) WILL DEPEND ON THE COMBINED JUDGMENT OF THE SECRETARIES OF STATE AND ENERGY AND SHOULD NOT INVOLVE FORMAL RULEMAKING PROCEDURES."

7. NEW SECTION 129 (1) (D) AND (2) (B) WERE MEANT TO COVER ACTIVITIES DIRECTLY RELATING TO THE MANUFACTURE OR ACQUISITION OF NUCLEAR EXPLOSIVE DEVICES. IT SHOULD BE NOTED THAT THE SENATE REPORT INDICATES THAT THE PROVISIONS CONCERNING EXPLOSIVE DEVELOPMENT "HAVE BEEN

VERY NARROWLY DRAFTED IN ORDER TO DISTINGUISH BETWEEN GENERAL SCIENTIFIC ACTIVITIES AND THOSE WHICH ARE REALLY INTENDED FOR EXPLOSIVE DEVELOPMENT. THUS, IT ONLY APPLIES TO ACTIVITIES ACTUALLY INVOLVING NUCLEAR MATERIAL, AND TO THOSE ACTIVITIES HAVING DIRECT SIGNIFICANCE FOR BOMB DEVELOPMENT." THIS PROVISION WAS NOT INTENDED TO APPLY TO LEGITIMATE CIVIL NUCLEAR ACTIVITIES.

2. THESE QUESTIONS AND ANSWERS ARE PROVIDED FOR EMBASSY BACKGROUND AND TO ENSURE THAT YOU ARE AWARE OF DEPARTMENT RESPONSES IF FRENCH RAISE SIMILAR QUESTIONS IN PARIS.

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FOLLOWING REPEAT STATE 076401 SENT ACTION PARIS MAR 24.

QUOTE LIMITED OFFICIAL USE STATE 076401

E.O. 11652:

TAGS: PARM, TECH, MNUC, ENRG

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THE SENATE REPORT ON THE NEW LEGISLATION INDICATES:

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"IT SHOULD ALSO BE NOTED THAT PARAGRAPH 4 (OF NEW SECTION
127 OF THE ATOMIC ENERGY ACT WHICH CONTAINS EXPORT LICEN-
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RESPECT TO TRANSFERS WITHIN THE EURATOM COMMUNITY, CONSISTENT WITH U. S. POLICY OF TREATING THAT COMMUNITY AS A SINGLE ENTITY."

WE ALSO CONSIDER THIS VIEW IN APPLICABLE TO THE INTERPRETATION OF PARAGRAPH (5) OF AMENDED SECTION 123 (A) OF THE ATOMIC ENERGY ACT, WHICH APPLIES TO AGREEMENTS FOR COOPERATION.

WITH RESPECT TO NEW AGREEMENTS FOR COOPERATION, THE LAW REQUIRES THAT THE U. S. SEEK A GUARANTEE "BY THE COOPERATING PARTY" THAT ANY MATERIAL OR PRODUCTION OR UTILIZATION FACILITY TRANSFERRED PURSUANT TO THE AGREEMENT OR ANY SPECIAL NUCLEAR MATERIAL PRODUCED THEREBY WILL NOT BE TRANSFERRED "BEYOND THE JURISDICTION OR CONTROL OF THE COOPERATING PARTY" WITHOUT THE CONSENT OF THE U.S.

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2. IF THE IMMEDIATE EXPORT LICENSING CRITERIA ARE MET (AND AFTER 24 MONTHS, THE FULL SCOPE SAFEGUARDS REQUIREMENT FOR NON-NUCLEAR-WEAPON STATES), THERE IS NO TIME LIMIT IN THE LAW TO CONCLUDE RENEGOTIATION OF EXISTING AGREEMENTS AND THUS EXPORT LICENSING CAN CONTINUE. WITH RESPECT TO EURATOM, WHICH CLEARLY DOES NOT MEET THE IMMEDIATE EXPORT CRITERION CONCERNING REPROCESSING, THE LIMITED OFFICIAL USE

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LAW PERMITS EXPORT LICENSES TO BE ISSUED FOR 30 DAYS AFTER ENACTMENT (MARCH 10). IF EURATOM DOES NOT AGREE TO NEGOTIATIONS, THE NRC WILL NOT BE ABLE TO ISSUE ANY EXPORT LICENSES AFTER THE EXPIRATION OF THE INITIAL 30-DAY PERIOD. IF EURATOM AGREES TO NEGOTIATIONS, THE LAW PROVIDES FOR A WAIVER OF THE IMMEDIATE EXPORT CRITERIA ON RETRANSFER AND REPROCESSING FOR A PERIOD EXTENDING TO 24 MONTHS AFTER ENACTMENT. THEREAFTER, UPON MAKING CERTAIN FINDINGS, THE PRESIDENT COULD EXTEND THIS PERIOD FOR SUCCESSIVE ONE YEAR PERIODS.

3. THERE IS NO PROVISION FOR THE LAW TO BE AUTOMATICALLY MODIFIED. CHANGES COULD OBVIOUSLY BE MADE THROUGH ENACTMENT OF A NEW LAW. HOWEVER, THE LAW PROVIDES CONSIDERABLE FLEXIBILITY AS TO ITS MANNER OF IMPLEMENTATION. IN IMPLEMENTING THE LAW AND EXERCISING ITS RIGHTS UNDER AGREEMENTS, THE U. S. WILL TAKE INTO ACCOUNT THE RESULTS OF INFCE.

4. AS INDICATED IN ANSWER 2, IF EURATOM AGREES TO NEGOTIATIONS, THE IMMEDIATE EXPORT CRITERIA ON REPROCESSING AND RETRANSFERS WILL NOT BE APPLIED FOR A PERIOD EXTENDING 24 MONTHS AFTER THE DATE OF ENACTMENT. THIS TIME PERIOD IS NOT MEASURED FROM WHEN THE AGREEMENT TO NEGOTIATE IS RECEIVED.

5. THIS PROVISION APPLIES TO "ANY PERSON" AND COVERS "DIRECT OR INDIRECT" PRODUCTION OF SPECIAL NUCLEAR MATERIAL OUTSIDE THE U. S. "PERSON" IS BROADLY DEFINED IN SECTION 11 (S) OF THE ATOMIC ENERGY ACT TO INCLUDE BOTH INDIVIDUALS AND COMPANIES SUBJECT TO U.S. JURISDICTION. SECTION 302 OF THE NEW LAW DOES NOT CHANGE THE SCOPE OF APPLICATION OF SECTION 57 B OF THE ATOMIC ENERGY ACT.

6. THIS PROVISION OF THE LAW IS AMBIGUOUS IN ITS APPLICATION
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CATION TO EXPANSION OF EXISTING FACILITIES. IT IS RELEVANT TO NOTE THAT THE SENATE REPORT CONTAINS THE FOLLOWING PARAGRAPH:

"SUBSECTION 303 B (3) PROVIDES THAT THE SECRETARY OF ENERGY SHALL ATTEMPT TO ENSURE THAT THE STANDARDS OF SUBSECTION 303 B (2) WILL ALSO BE MET WITH RESPECT TO SUBSEQUENT ARRANGEMENTS FOR REPROCESSING IN THE EXEMPTED FACILITIES AND RELATED RETRANSFERS. THE APPROVAL OF REPROCESSING IN THE FOLLOWING FACILITIES WOULD COME UNDER SUBSECTION 303 B (3): WINDSCALE (UK), MARCOULE AND LA HAGUE (FRANCE), EUROCHEMIEC (BELGIUM), WAK (FRG), AND TOKAI-MURA (JAPAN). IT SHOULD BE NOTED THAT IMPLEMENTATION OF THE STANDARD DESCRIBED IN SUBSECTION 303 B (2) WILL DEPEND ON THE COMBINED JUDGMENT OF THE SECRETARIES OF STATE AND ENERGY AND SHOULD NOT INVOLVE FORMAL RULEMAKING PROCEDURES."

7. NEW SECTION 129 (1) (D) AND (2) (B) WERE MEANT TO COVER ACTIVITIES DIRECTLY RELATING TO THE MANUFACTURE OR ACQUISITION OF NUCLEAR EXPLOSIVE DEVICES. IT SHOULD BE NOTED THAT THE SENATE REPORT INDICATES THAT THE PROVISIONS CONCERNING EXPLOSIVE DEVELOPMENT "HAVE BEEN

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TO LEGITIMATE CIVIL NUCLEAR ACTIVITIES.

2. THESE QUESTIONS AND ANSWERS ARE PROVIDED FOR EMBASSY
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BACKGROUND AND TO ENSURE THAT YOU ARE AWARE OF DEPARTMENT
RESPONSES IF FRENCH RAISE SIMILAR QUESTIONS IN PARIS.

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Subject: NON-PROLIFERATION LEGISLATION

TAGS: PARM, TECH, MNUC, ENRG

To: PARIS

Type: TE

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Review Markings:

Sheryl P. Walter

Declassified/Released

US Department of State

EO Systematic Review

20 Mar 2014

Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014